IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.251 OF 1993
WITH
CIVIL APPLICATION ST.NO.15079 OF 2006
WITH
CIVIL APPLICATION ST.NO.15077 OF 2006

Suo Moto

V/s.

Mr.V.S.Jadhav & Ors. ..Respondents.

Mr.N.V.Bandiwadekar appointed as Amicus Curiae.

Mr.Anthony T. Marques for plaintiffs.

Mr.A.Y.Sakhare with Mr.Malandkar & A.J.Bhor for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 24, 2006.

P.C. :

1. Heard counsel for the parties. Perused the relevant documents on record.

2. This contempt petition emanates from the reference made by the City Civil Court, Bombay wide Judgment and Order dated March 11, 1993 in L.C.Suit No.2667 of 1991. The plaintiffs in the said suit, in all 78 in numbers, moved Notice of Motion for interim relief being Notice Of Motion No.1986 of 1991, during the pendency of the suit. The reliefs claimed in the said Notice of Motion read thus:

> "(a) That pending the hearing and final disposal of the suit, the Defendants, their officers, employees, servants and agents be restrained by an order and injunction of this Hon'ble Court from interfering with and/or disturbing the Plaintiffs' peaceful use, occupation, possession and enjoyment of their respective huts and/or dispossessing the Plaintiffs and/or demolishing their respective huts situated at Dr.Babasaheb Ambedkar Nagar, Group No.VII & VIII, Tagore Nagar, Vikhroli, Bombay-400 083, more particularly described in the rough sketch plan being EXHIBIT 'A' to the plaint, without due process of law;
>
> (b) Ad-interim injunction in terms of prayer (a) above;
>
> (c) Cost of the Notice of Motion;
>
> (d) For such other and further reliefs as the nature and circumstances of the case may require.

The trial Court was pleased to grant ad-interim relief in terms of prayer clause (a) on 27th March, 1991. It is the case of the plaintiffs that inspite of the order of injunction operating against the respondent contemnors, they wilfully proceeded to demolish the structures protected by the said order. On this allegation Contempt Notice of Motion No.6328 of 1992 came to be filed for initiating appropriate action against the respondents/contemnors. The trial Court while considering the said Contempt Notice of Motion appointed Court Commissioner to invite his findings on two points under order dated 4th March,

1993. The two points formulated by the Trial Court read thus:

> 1. In context with the sketch annexed to the plaint and the two photographs affixed to the Injunction order, to ascertain whether the huts seen in the said photographs are in existence or not. If found in existence to record the mode and nature of condition.
>
> 2. AND to record the place at which the huts pointed out by the Plaintiff and the Officer of the Defendants exist and to report about the mode of condition."

The Court Commissioner submitted report dated 6th March, 1993. The relevant portion of the said report reads thus:

> . I took round of the entire suit-site and seen the present condition of the huts from North to South side in the presence of the representative of Suit and I noticed that:-
>
> 1. The entire huts are in existence and located eleven feet away from the Road Side as shown in sketch attached.
>
> 2. Each hut is numbered serially viz.1, 2,3,4,5 etc. except some huts.
>
> 3. Some huts are located on back side of the suit structure (huts) viz. 4,6,7,12, 14, 16,18,20,21,etc. (as shown in the Plan)
>
> 4. Most of the huts are in dilapidated condition.
>
> 5. Some of the huts are in partly broken condition.
>
> 6. The roof portion as well as sides of the some huts are covered temporary with Gunny bags, Tarpolins and Plastic papers etc.

> 7. Two/three huts are found intact condition with brick side walls and A.C.Sheet roof.
>
> 8. Some huts are without roof and side wall, except with rough flooring tiles etc.
>
> 9. Most of the huts are fully occupied with house-hold articles.
>
> 10. Two/three huts are found closed with lock and key.
>
> 11. Some broken brick pieces, bamboo etc. were seen outside the huts.
>
> 12. The huts numbers are not in order as the Hut being No.76 is located near Hut No.2 and Hut No.9 is in different place.
>
> 13. The huts as shown in the photographs are in existence but the present structural condition of the hut is very poor as some huts are found in dilapidated condition.
>
> . I inspected suit-site huts from North Side alongwith the representatives of the suit and I noticed that the condition of entire huts situated in the suit-site is very bad.
>
> . The Commission work was completed in the presence of the said both parties at about 11.30 A.M."

The trial Court then proceeded to consider the materials on record and found that, prima facie, respondents/contemnors had wilfully flouted the orders of the Court. The trial Court has noted that the respondents have caused to demolish the structures which were covered by the order of injunction. It is on that finding, the trial Court

referred the matter to this Court for taking appropriate action against the respondents/-contemnors.

3. After having gone through the relevant materials on record and the affidavits filed by the respective parties, in my opinion, this is not a case for initiating contempt action against the respondents/contemnors. This is so because the case made out by the plaintiffs in the Contempt Notice of Motion is as follows:

> . "We say that on 5-11-1992 at about 11 a.m. the Respondents Nos. 1 to 4 in utter contempt and in total violation of the said Order of Injunction dated 27-3-1991 granted by this Hon'ble Court, began demolishing each and every huts of the Plaintiffs. The whole operation of demolition lasted upto 4 p.m. We say that the defendants or the Respondents abovenamed did not give any notice of the said demolition to the plaintiffs."

4. This is the only relevant averment on the basis of which contempt action proceeds. In the rest of the affidavit, allegation is made by the plaintiffs against the respondents/contemnors who were allegedly present on the scene and issued instructions to the staff to demolish the suit structures that too without any prior notice. Indeed, the respondents have refuted the allegations

made in the Contempt Notice of Motion against them before the lower Court. However, the stand taken by the respondents did not find favour with the trial Court. Even before this court Respondent Nos. 1 and 2 have filed affidavit contesting contempt action. Suffice it to observe that the case as made out in the Contempt Motion filed against the respondents even if accepted as it is, would only indicate that the respondent Nos.1 to 4 in utter disregard of the order of injunction demolished each and every hut of the plaintiffs. That means all the huts of the plaintiffs which were covered by the Order of injunction have been demolished. This allegation in the first place is too vague to proceed against the respondents, especially having regard to the report of the Commissioner, which has now come on record. Before adverting to the Commissioner's report, it will be relevant to point out that the plaintiffs had annexed rough sketch alongwith the plaint to point out the location of the structures, which belonged to the plaintiffs. Respondents in particular in the affidavit of respondent No.3 which was filed before the Lower Court has clearly asserted as follows:

> "6. With reference to para 1 of the affidavit in support of the Notice of Motion for Contempt, I say that the contents raised in the said para are correct. I further say

that the plaintiff has stated that the suit structures are situated At.Dr.Babasaheb Ambedkar Nagar Group No.VII and VIII, Tagore Nagar, Vikhroli, Bombay. However, these defendants have demolished the structures as shown in the sketch annexed hereto and marked Ex.'A' and 'B' to this reply and those structures were completely on the road and which were causing nuisance to the traffice and further more, I submit that those structures were situated at Group No.II and the structures which were removed by the defendants on 5.11.1992 were not the subject matter of the present suit and, therefore, it is crystal clear that the structures which were removed by the Corporation do not cover under the injunction Order of this Hon'ble Court. I further say and submit that Ex.A annexed to the plaint is not correct. I say that the structures constructed unathorisedly on the road without permission from the Corporation were removed on the both sides of the road/abating to the road, which were removed by the Corporation and which were not covered under the injunction order. I say that the compound wall of Kabir Maidan is divider of road and Kabir Maidan. The said Kabir Maidan has already been acquired by the Corporation. I say that the structures shown in skech 'A' to the Reply which were abating to the compound wall of the Kabir Maidan were removed by the Corporation and the structures shown in the sketch 'B' to the Reply were also removed by the Corporation as they were not the subject matter of the suit structure. I, therefore, deny that the Respondents have not demolished the suit structures as alleged. I say that there is a connected suit filed by the residents of the locality being Suit No.4455 of 1989 wherein the defendants have filed the reply. I say that the defendants have already filed their affidavit while raising the objection to the Commissioner's Report. I crave leave to refer to and rely upon the reply filed on 27th November 1992 and affidavit dtd. 27.1.1993 as and when produced. I say that some of the hutment dwellers as shown portion 'B' marked in the sketch themselves have removed the hutments fearing the demolition of their hutments. However, thereafter the

> said hutment dwellers have reconstructed their huts on site ‘A’ and ‘B’ respectively. I say that neither myself nor any of the Respondents entered into the suit premises at all."(emphasis supplied)

The respondents also placed on record Exh.A and B, which is rough sketch of the location of the suit structures so as to identify the structures which have been demolished on 25th November, 1992. The specific case made out by the respondents in the affidavit is that the structures which were falling within the road line came to be demolished. It is not the case of the plaintiffs that the structures falling within the road line belonged to the plaintiffs. Even the sketch produced by the plaintiffs alongwith the plaint would indicate that the location of the suit structures was slightly away from the road line. The fact that the structures, which were falling only within the road line have been demolished, is reinforced from the report submitted by the Court Commissioner. Relevant portion thereof is already extracted in the earlier part of the order. Court Commissioner also produced map, rough sketch of the location of the structures, which sketch is consistent with the location of the suit structures given by the plaintiffs themselves as well as with the location given in the map produced

by the respondents alongwith the affidavit of respondent No.3. Indeed, the report of the Court Commissioner does indicate that some of the huts are found to be in partly broken condition or that the condition of some of the structures was not good. It cannot be overlooked that it is common ground that the suit structures were not permanent structures. The respective structures were made of tarpolins and gunny bags, plastic sheets(huts). Having regard to the nature of structures, it is obvious that the same cannot be expected to be in very good condition. What is relevant for our purpose is the finding recorded by the Court Commissioner that the entire huts as referred to in the photographs and the sketch are in existence and located eleven feet away from the road side as shown in the sketch attached. The structures which are located away from the road side are the structures covered by the order of injunction. If those structures have not been touched, there can be no occasion to proceed against the respondents. The Court below with utmost respect has proceeded on surmises and conjectures to find that even the suit structures, which were covered by Order of injunction have been demolished, which finding is manifest error on the basis of material on record. Thus understood, the matter cannot be

precipitated further. Instead, the contempt proceeding will have to be dropped. Notice issue to respondents/contemnors stands discharged.

5. While parting, I have to record a word of appreciation for the able assistance given by Mr. Bandivadekar who appeared as amicus curiae on the request made by the Court. Indeed, I also had the benefit of hearing Mr. Anthony T. Marques advocate for the plaintiffs.

6. In view of this order, it is needless to observe that interim order issued by this Court directing issuance of bailable warrants against the respondents/contemnors to secure their presence at the hearing of this petition will stand recalled.

7. Contempt petition as well as civil applications disposed of on the above terms.